

**RULES
OF
THE TENNESSEE BOARD OF PHARMACY**

**CHAPTER 1140-9
MANUFACTURERS AND WHOLESALERS**

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1140-9-.01 MANUFACTURER AND WHOLESALER LICENSING.

- (1) Every manufacturer or wholesaler, before engaging in the sale or distribution of prescription drugs and prescription devices in this state, must be licensed by the Board in accordance with this chapter.
- (2) An applicant with physical facilities in this state must obtain and display prominently a separate license for each principal place of business where the applicant manufactures or distributes prescription drugs and prescription devices.
- (3) The requirement of a license shall not apply to the following types of distributions:
 - (a) Intracompany sales;
 - (b) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a prescription drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;
 - (c) The sale, purchase or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;
 - (d) The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities that are under common control; for purposes of this subparagraph, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization whether by ownership of stock, voting rights, by contract or otherwise;
 - (e) The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug for emergency medical reasons; for purpose of this subparagraph, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy practice site to alleviate a temporary shortage;
 - (f) The sale, purchase, or trade of a prescription drug, an offer to sell, purchase or trade a prescription drug, or the dispensing of a prescription drug pursuant to a medical or prescription order;
 - (g) The distribution of prescription drug samples by manufacturers' representatives; or
 - (h) The sale, purchase, or trade of blood and blood components intended for transfusion.

(Rule 1140-9-.01, continued)

- (i) The sale, purchase, or trade of a prescription drug, or an offer to sell, purchase or trade of a prescription drug by a pharmacy practice site to another pharmacy practice site or to authorized prescribing practitioners, except that the total gross dollar volume of such transfers shall not exceed five percent (5%) of the total medical and prescription orders sales revenue of either the transferor or transferee pharmacy during any twelve (12) consecutive month period.

Authority: T.C.A. § 63-10-404(2),(8),(14),(18),(37), § 63-10-504(b)(1), § 63-10-506(f). **Administrative History:** Original rule filed January 7, 1992; effective February 21, 1992. Repeal and new rule filed May 11, 1998; effective July 25, 1998.

1140-9-.02 MINIMUM INFORMATION REQUIRED.

- (1) The board shall require the following minimum information from each manufacturer or wholesaler applying for a license or any renewal of such license:
 - (a) The name, full business address, and telephone number of the manufacturer or wholesaler;
 - (b) All trade or business names used by the manufacturer or wholesaler;
 - (c) Addresses, telephone numbers, and the names of contact persons for all facilities used by the manufacturer or wholesaler for storage, handling, and distribution;
 - (d) The type of ownership or operation (i.e., partnership, corporation, or sole proprietorship); and
 - (e) The name(s) of the owner and/or operator of the manufacturer or wholesaler, including:
 - 1. If a person, the name of the person;
 - 2. If a partnership, the name of each partner, and the name of the partnership;
 - 3. If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation;
 - 4. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity; and
 - 5. DEA registration number if applicable.
- (2) Changes in any information in paragraph (1) of this rule shall be submitted to the board immediately.

Authority: T.C.A. § 63-10-404(2),(18),(37), § 63-10-504(b)(1), § 63-10-506(f). **Administrative History:** Original rule filed January 7, 1992; effective February 21, 1992. Repeal and new rule filed May 11, 1998; effective July 25, 1998.

1140-9-.03 MINIMUM QUALIFICATIONS.

- (1) The board shall consider, at a minimum, the following factors in reviewing an application for a license as a manufacturer or wholesaler:
 - (a) Any convictions of the applicant under any federal, state, or local laws relating to drug samples or distribution of controlled substances;

(Rule 1140-9-.03, continued)

- (b) Any felony convictions of the applicant under federal, state, or local laws;
 - (c) The applicant's past experience in the manufacturing or distribution of prescription drugs and prescription devices, including controlled substances;
 - (d) The furnishing by the applicant of false or fraudulent material in any application made in connection with manufacturing or distribution;
 - (e) Suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances, prescription drugs and prescription devices;
 - (f) Compliance with licensing requirements under previously granted licenses, if any;
 - (g) Compliance with requirements to maintain and/or make available to the board or to federal, state, or local law enforcement officials those records required federal, state or local laws; and
 - (h) Any other factors or qualifications the board considers relevant to and consistent with the public health and safety.
- (2) The board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest.

Authority: T.C.A. § 63-10-404(2),(6),(8),(14),(18),(37), § 63-10-504(b)(1). **Administrative History:** Original rule filed January 7, 1992 effective February 21, 1992. Repeal and new rule filed May 11, 1999, effective July 25, 1998.

1140-9-.04 PERSONNEL.

The board shall require that personnel employed by a manufacturer or wholesaler have appropriate education and/or experience to assume positions of responsibility for compliance with board requirements.

Authority: T.C.A. § 63-10-404(2),(18),(37), § 63-10-504(b)(1). **Administrative History:** Original rule filed January 7, 1992 effective February 21, 1992. Repeal and new rule filed May 11, 1998; effective July 25, 1998.

1140-9-.05 MINIMUM REQUIREMENTS FOR OPERATION.

The following shall be the minimum requirements for the storage and handling of prescription drugs and prescription devices and for the establishment and maintenance of prescription drug and prescription device distribution records by manufacturers and wholesalers:

- (1) Facilities. All facilities at which prescription drugs and prescription devices are stored, warehoused, handled, held, offered, marketed, or displayed shall:
 - (a) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;
 - (b) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;
 - (c) Have a quarantine area for storage of prescription drugs and prescription devices that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;
 - (d) Be maintained in a clean and orderly condition, and

(Rule 1140-9-.05, continued)

- (e) Be free from infestation by insects, rodents, birds, or vermin of any kind.
- (2) Security.
 - (a) All facilities shall be secure from unauthorized entry.
 - 1. Access from outside the premises shall be kept to a minimum and be well-controlled.
 - 2. The outside perimeter of the premises shall be well-lighted.
 - 3. Entry into areas where prescription drugs and prescription devices are held shall be limited to authorized personnel.
 - (b) All facilities shall be equipped with an alarm system to detect entry after hours.
 - (c) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.
- (3) Storage. All prescription drugs and prescription devices shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs and devices, or with requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).
 - (a) If no storage requirements are established for a prescription drug or prescription device it may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that identity, strength, quality, and purity are not adversely affected.
 - (b) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of prescription drugs and prescription devices.
 - (c) The record keeping requirements in paragraph (6) of this section shall be followed for all prescription drugs and prescription devices.
- (4) Examination of materials.
 - (a) Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.
 - (b) Each outgoing shipment shall be carefully inspected for identity of the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.
 - (c) The record keeping requirements in paragraph (6) of this section shall be followed for all incoming and outgoing prescription drugs.
- (5) Returned, damaged, and outdated prescription drugs and prescription devices.
 - (a) Prescription drugs and prescription devices that are outside, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription drugs and prescription devices until destroyed or returned.

(Rule 1140-9-.05, continued)

- (b) Any prescription drugs and prescription devices whose immediate or sealed outer or sealed secondary containers have been opened or used shall be quarantined and physically separated from other prescription drugs and prescription devices until either destroyed or returned.
 - (c) If the conditions under which a prescription drug or prescription device has been returned cast doubt on safety, identity, strength, quality, or purity, then the prescription drug or prescription device shall be destroyed, or returned, unless examination, testing, or other investigation proves that the prescription drug or prescription device meets appropriate standards of safety, identity, strength, quality and purity. In determining whether the conditions under which a prescription drug or prescription device has been returned cast doubt on safety, identity, strength, quality, or purity, the manufacturer or wholesaler shall consider, among other things, the conditions under which the prescription drug or prescription device has been held, stored or shipped before or during return and the condition of the prescription drug or device or related material and its container, carton, or labeling, as a result of storage or shipping.
 - (d) The record keeping requirements in paragraph (6) of this section shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription drugs and prescription devices.
- (6) Record keeping.
 - (a) Manufacturers and wholesalers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription devices. These records shall include the following information:
 - 1. The source of the prescription drugs and prescription devices including the name and principal address of the seller or transferor, and the address of the location from which the prescription drugs and prescription devices were shipped;
 - 2. The identity and quantity of the prescription drugs and prescription devices received and distributed or disposed of; and
 - 3. The dates of receipt and distribution or other disposition of the prescription drugs and prescription devices.
 - (b) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the prescription drugs and prescription devices.
 - (c) Records described in this paragraph that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.
- (7) Written policies and procedures. Manufacturers and wholesalers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs and prescription devices; including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. Manufacturers and wholesalers shall include in written policies and procedures the following:

(Rule 1140-9-.05, continued)

- (a) A procedure whereby the older approved stock of a prescription drug or prescription device is distributed first. The procedure may permit deviation from this requirement, if such deviation is temporary and appropriate.
- (b) A procedure to be followed for handling recalls and withdrawals of prescription drugs and prescription devices. Such procedures shall be adequate to respond to recalls and withdrawals due to:
 - 1. Any action initiated at the request of the United States Food and Drug Administration or other federal, state, or local law enforcement or other government agency, including the board;
 - 2. Any voluntary action by the manufacturer or wholesaler to remove defective or potentially defective prescription drugs and prescription devices from the market; or
 - 3. Any action undertaken to promote public health and safety by replacing of an existing product with an improved product or new package design.
- (c) A procedure to ensure that manufacturers and wholesalers prepare for, protect against, and respond to any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency.
- (d) A procedure to ensure that any outdated prescription drugs and prescription devices shall be segregated from other prescription drugs and prescription devices and either returned to the manufacturer or wholesaler or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs and prescription devices. This documentation shall be maintained for two (2) years after disposition of the outdated prescription drugs and prescription devices.
- (8) Responsible persons. Manufacturers and wholesalers shall establish and maintain lists of officers, directors, managers, and other persons in charge of distribution, storage, and handling, including a description of such persons' duties and a summary of such persons' qualifications.
- (9) Compliance with federal, state, and local law. Manufacturers and wholesalers shall operate in compliance with applicable federal, state, and local laws and regulations.
 - (a) Manufacturers and wholesalers shall permit the board and authorized federal, state, and local law enforcement officials to enter and inspect premises and delivery vehicles, and to audit records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law.
 - (b) Manufacturers and wholesalers that handle controlled substances shall register with the board and with the United States Drug Enforcement Administration (DEA) and shall comply with applicable state, local and DEA regulations.
- (10) Salvaging and reprocessing. Manufacturers and wholesalers shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to salvaging or reprocessing of prescription drugs and prescription devices.

Authority: T.C.A. § 63-10-404(8),(18),(33),(37), § 63-10-504(b)(1). **Administrative History:** Original rule filed January 7, 1992 effective February 21, 1992. Repeal and new rule filed May 11, 1998; effective July 25, 1998.